



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F06-13

INSURANCE CORPORATION OF BRITISH COLUMBIA

Celia Francis, Adjudicator
July 12, 2006

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Summary: Applicant requested the name and address of the registered owner of an identified licence plate. ICBC withheld the information correctly under s. 22(1).

Key Words: personal information—personal privacy—unreasonable invasion—fair determination of rights—unfair exposure to harm.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(c) & (e).

Authorities Considered: B.C.: Order 00-28, [2000] B.C.I.P.C.D. No. 31; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 01-54, [2001] B.C.I.P.C.D. No. 57; Order 02-02, [2002] B.C.I.P.C.D. No. 2; Order F05-31, [2005] B.C.I.P.C.D. No. 42; Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 02-21, [2002] B.C.I.P.C.D. No. 21; Order 00-42, [2000] B.C.I.P.C.D. No. 46; Order F05-28, [2005] B.C.I.P.C.D. No. 38.

1.0 INTRODUCTION

[1] The applicant in this case asserts that he was the victim of a self-described “Road Rage” incident that resulted in damage to his motor vehicle. The applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (“Act”) to the Insurance Corporation of British Columbia (“ICBC”) for the name and address of the registered third-party owner of an identified licence plate.

[2] ICBC responded to the applicant by denying access to the record under s. 22 of the Act. The applicant then requested a review of the denial.

Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act.

2.0 ISSUES

[3] The issue to be decided here is whether ICBC is required under s. 22(1) of the Act to refuse access to the requested information.

[4] The notice of inquiry this Office issued also said that s. 19(1) was in issue. ICBC, however, cited only s. 22 in its decision to deny access and, in its initial submission, stated that s. 22 was the only issue. ICBC's submissions did not mention s. 19(1)¹ and the applicant also did not address s. 19(1). I have, therefore, not considered s. 19(1) in this decision.

[5] Under s. 57(2), the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[6] **3.1 Personal Privacy**—ICBC argued that s. 22 requires it to withhold the name and address of the registered third-party owner of the identified licence plate. Section 22 of the Act requires a public body to withhold personal information if its disclosure would result in an unreasonable invasion of a third party's personal privacy.

[7] The Information and Privacy Commissioner has discussed the application of s. 22 in a number of orders. See, for example, Order 01-53.² I will not repeat that discussion but have applied the same principles here. The relevant portions of s. 22 in this case are as follows:

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether ...

(c) the personal information is relevant to a fair determination of the applicant's rights, ...

¹ Para. 13, initial submission of ICBC.

² [2001] B.C.I.P.C.D. No. 56.

- (e) the third party will be exposed unfairly to financial or other harm,

[8] It is clear that the name and address of the owner of the licence plate are personal information within the definition of “personal information” in Schedule 1 of the Act, that is, “recorded information about an identifiable individual other than contact information”. The material indicates that the third party’s address is his residential address, as the private owner of a vehicle.³

[9] I agree with ICBC’s submission that none of the criteria set out in ss. 22(4) and 22(3) of the Act is applicable in this case.⁴ I will now turn to a consideration of relevant circumstances.

[10] **3.2 Relevant Circumstances**—Both parties discussed the factor in s. 22(2)(c). ICBC also appears to have considered factors that are relevant to s. 22(2)(e), although it does not explicitly say so.

Fair determination of the applicant’s rights

[11] While the applicant does not specifically cite s. 22(2)(c) as support for his request for the third party’s personal information, he asserts that he needs the information so that he can start a small claims court action to recover a \$318.00 loss for the damage to his motor vehicle that occurred as a result of someone kicking in his passenger window.⁵

[12] In Order 01-07,⁶ the Commissioner set out the test for determining if personal information is relevant to a fair determination of the applicant’s rights as follows:

[31] In Ontario Order P-651, [1994] O.I.P.C. No. 104, the equivalent of s. 22(2)(c) was held to apply only where *all* of the following circumstances exist:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;

³ Neither party raised the possibility that the requested information was “contact information” and I have therefore not considered it here. In any case, I fail to see, as a preliminary view based on the material before me, how the requested personal information in this case could be “contact information”.

⁴ Para. 17, ICBC’s initial submission.

⁵ Page 1, applicant’s submission.

⁶ [2001] B.C.I.P.C.D. No. 7.

3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[32] I agree with this formulation. I also note that, in *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.), at paras. 85-89, Lynn Smith J. concluded that a complainant's "fairness" concerns, related to the conduct of a complaint investigation, did not activate s. 22(2)(c).

[13] ICBC also addressed s. 22(2)(c) in its submissions, arguing that it does not apply here. According to ICBC, when asked why he wanted the information, the applicant replied that "someone should teach a lesson to punks like this" but that the applicant also indicated that he might pursue the matter through the courts. ICBC discounted this latter possibility—for reasons set out below in the discussion of s. 22(2)(e)—and said that, in any case, the applicant does not need the third party's name and address to start a court action.⁷ It said that arguments similar to the applicant's have been considered in a number of orders, for example, Order 01-54,⁸ Order 02-02,⁹ and Order F05-31.¹⁰ In support of its position, ICBC cited the following passage from Order F05-31:

[50] In any case, independent of the above, the IUOE has not shown that it needs the personal information in order to start an action for defamation, making that information relevant to a fair determination of rights. I say this because, even accepting for discussion purposes that IUOE Local 963 has a cause of action for defamation in its own right, the IUOE does not need to know the identity of the third party to begin such a lawsuit. A defamation action can be started against unidentified defendants, in a so-called John Doe action. A plaintiff can then seek a court order for disclosure of information in the hands of third parties, for the purpose of discovering the identity of the person responsible for the defamation. This is clear, as regards defamation actions [citations omitted].

[14] I agree with ICBC's argument that it is open to the applicant in this case to seek the third party's name through the small claims process. In other words, the applicant can initiate a small claims action without the name of the third party. I conclude that disclosure of the information in dispute in this case is not relevant to a fair determination of any legal rights the applicant may have. I find that s. 22(2)(c) of the Act does not apply here.

⁷ Paras. 6, 12 & 18–21, ICBC's initial submission.

⁸ [2001] B.C.I.P.C.D. No. 57.

⁹ [2002] B.C.I.P.C.D. No. 2.

¹⁰ [2005] B.C.I.P.C.D. No. 42.

Unfair exposure to financial or other harm

[15] Although it did not expressly say so, ICBC apparently considered factors that relate to s. 22(2)(e). ICBC argued that comments made by the applicant during conversations with an ICBC adjuster:

... raised some legitimate concerns on the part of ICBC about whether the Applicant intended to cause some harm (e.g. physical harm) to the third party. Road rage incidents are, by their very nature, fraught with emotion and it seems that despite the long period of time that has elapsed since the road rage incident involving the Applicant took place, the Applicant is still very upset about what happened and wants to “get even”.¹¹

[16] ICBC’s evidence consists of an affidavit from an ICBC employee who had numerous conversations with the applicant regarding the incident. The ICBC employee deposed, among other things, that:

6. ...The Applicant indicated he was quite frustrated as he had been referred from one source to another and yet had not been able to obtain the name and address of the suspect. The Applicant told me that “someone should teach a lesson to punks like this”. ...The Applicant did indicate that he might pursue the matter through the courts. However, my impression of his tone and level of frustration, coupled with his reference to teaching the suspect a lesson, led me to believe that the Applicant intended to take matters into his own hands rather than pursue legal channels.

7. I told the Applicant that, based on our conversation, I was not satisfied that he was not considering physical harm to the suspect....¹²

[17] The applicant did not specifically address s. 22(2)(e) in his submission. He stated: “people should not be permitted to get away with ‘Road Rage’. When I get this info [*sic*] I can then proceed with a Small Claims [*sic*]”.¹³

[18] In Order 00-02,¹⁴ the Commissioner held that exposure to physical or mental harm can fall within this section. However, in this case, as in Order 02-21,¹⁵ ICBC’s evidence with respect to harm is speculative.

[19] The applicant stated, and I accept, that he reported the matter to the police, ICBC and his private insurer. Despite these efforts, it appears that the applicant has been unable to recover the full loss of the damage to his vehicle. It is understandable that in these circumstances the applicant would experience

¹¹ Para. 22, ICBC’s initial submission.

¹² Teizad affidavit.

¹³ Page 1, applicant’s submission.

¹⁴ [2000] B.C.I.P.C.D. No. 2.

¹⁵ [2002] B.C.I.P.C.D. No. 21.

and express frustration. It is clear that the applicant has been frustrated as a result of both the incident and his attempts to resolve the matter and—even many months later—is still upset over the incident. However, I do not accept ICBC's position that physical harm could result from disclosure of the information requested. I conclude that s. 22(2)(e) is not relevant here.

Is the applicant entitled to the third party's name and address?

[20] I have found that the disputed information is “personal information” and, although it does not fall within any of the presumed unreasonable invasions of personal privacy in s. 22(3), this does not mean, as the Commissioner has said in similar circumstances,¹⁶ that, under s. 22(1), the information can be disclosed without unreasonably invading third-party privacy. In this case, none of the relevant circumstances favours disclosure of the third party's name and address. The applicant has not established that this third-party personal information should be disclosed and I find that s. 22(1) requires ICBC to withhold it

4.0 CONCLUSION

[21] For the reasons given above, under s. 58 of the Act, I require ICBC to refuse access to the information which it withheld under s. 22(1).

July 12, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

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¹⁶ See, for example, Order 00-42, [2000] B.C.I.P.C.D. No. 46, and Order F05-28, [2005] B.C.I.P.C.D. No. 38, where the Commissioner found that third parties' home and email address information, although it did not fall under s. 22(3) had to be withheld under s. 22(1).